

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-109312-10

Date:

June 29, 2010

X =

A =

B =

C =

D =

Trust =

State =

Date =

1

Date =

2

Date =

3

Date =

4

n =

Dear :

This letter responds to a letter dated January 26, 2010, and subsequent correspondence, submitted on behalf of A and X by their authorized representative, requesting rulings under §§ 678 and 1361 of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. A is the sole shareholder of X. X filed an election to be treated as an S corporation under § 1362 for its taxable year beginning Date 2. On Date 3, B (the donor), C, and D created Trust and named A and A's children as Trust's beneficiaries. Under the trust agreement, the independent trustee has absolute discretion to distribute part or all of the net income of Trust as the trustee deems appropriate to any one or more then living of the beneficiaries, in amounts and proportions as the trustee determines. Under the trust agreement, Trust is an irrevocable trust with B having expressly renounced and relinquished all rights, interests, and powers in Trust property.

Under the trust agreement, whenever a gift is made or is deemed to have been made to Trust during B's lifetime, A has the power to withdraw out of the assets of Trust an amount not to exceed the amount of such gift, provided, however, that the amount that can be withdrawn by A in any one calendar year is limited to the maximum amount as to which the power of withdrawal can lapse without the lapse constituting the release of a general power of appointment under §§ 2041(b)(2) and 2514(e). It is anticipated that all gifts made to Trust during B's lifetime will be subject to this withdrawal power.

On Date 3, B made a gift of cash in the amount of \$n to Trust. On Date 4, B made an additional gift of cash in the amount of \$n to Trust. \$n is not greater than the maximum amount as to which the power of withdrawal can lapse without the lapse constituting the release of a general power of appointment under §§ 2041(b)(2) and 2514(e). A did not exercise the withdrawal power with respect to either the Date 3 or Date 4 gift. No additional gifts have been made to Trust. Trust contemplates purchasing stock in X.

Based on the above facts and representations, A and X request rulings that A will be treated as the owner of Trust under § 678 and that Trust is a permitted S corporation shareholder as described in § 1361(c)(2)(A)(i).

Section 678(a) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) the person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) the person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would cause a grantor to be treated as the owner of such portion of the trust within the principles of §§ 671 to 677, inclusive.

Section 677(a) provides, in part, that the grantor shall be treated as the owner of any portion of a trust, whether or not the grantor is treated as such owner under § 674,

whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a non-adverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; or (2) held or accumulated for future distribution to the grantor or the grantor's spouse.

Section 678(b) provides that § 678(a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust is otherwise treated as the owner under the provisions of subpart E other than § 678.

In Rev. Rul. 67-241, 1967-2 C.B. 225, the beneficiary of a trust held a noncumulative power, exercisable solely by the beneficiary, to withdraw certain amounts of corpus annually from a trust. Rev. Rul. 67-241 holds that, whether or not the demand power is exercised, the beneficiary is treated under § 678(a) as the owner of the portion of the trust subject to the demand power while the power is held.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter I) as owned by an individual who is a citizen or resident of the United States may be a shareholder in an S corporation. The deemed owner of the trust shall be treated as the shareholder under § 1361(c)(2)(B)(i).

Based solely on the information submitted and the representations made, we conclude that A will be treated as the owner of Trust under § 678 and that Trust is a permitted S corporation shareholder as described in § 1361(c)(2)(A)(i), assuming no gift is made to Trust in excess of the amount subject to A's withdrawal power.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any of the provisions of the Code or regulations. Specifically, no opinion is expressed on whether X is otherwise eligible to be treated as an S corporation or on the proper treatment of a Trust purchase of X stock.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to A's and X's authorized representative.

Sincerely,

Bradford R. Poston
Acting Chief, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: (2)

Copy of this letter

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